

A poll released by a consortium of pro-net neutrality found that self-identifying conservatives widely support regulation to limit cable companies's ability to affect the Internet.

Some 83 percent, in fact, of “thought that Congress should take action to ensure that cable companies do not ‘monopolize the Internet’ or ‘reduce the inherent equality of the Internet’ by charging some content companies for speedier access,” reported Haley Edwards at *Time*.

And in fact, there's a considerable and straightforward conservative argument for regulating to protect net neutrality. Without net neutrality, Internet providers can charge a toll to companies or make them pay more to have access to an “Internet fast lane.” Giant tech firms, able to pay the toll, could then provide services that newer startups couldn't, and giant companies would have a leg up on more nimble competitors.

The competition that has made the American technology sector possible, in other words, would calcify.

Regulating for net neutrality protects small business without imposing demands on it. Making net neutrality the law, in fact, would just preserve the regulatory scheme as it's essentially been over the last couple decades. So far, so straightforward.

But looking at the legal record makes this recent conservative shift issue even odder. The only time net neutrality regulation went to the U.S. Supreme Court, it had no greater ally than one Justice Antonin Scalia.

In 2005, the Supreme Court ruled on *Brand X*. In the early days of the web, many companies sold customers access to the Internet over another company's phone wires. Brand X wanted to do the same over cable broadband wires—but the FCC had decided a few years before that cable Internet, unlike the dial-up web connection which Brand X was selling, wasn't a utility.

The *Brand X* trial turned on something weird. Congress had defined just what a telecommunications utility was in the [Telecommunications Act of 1996](#)—the same law which empowered the FCC to regulate the industry. All the justices agreed that, per Congress's definition, cable broadband worked more like a utility than anything else. But all of the justices agreed, too, that Congress's definition was a little unclear.

Did the FCC have the right to interpret this “ambiguous” law—the law that permits the FCC to exist—in a way that *everyone* on the Court thought, well, wasn’t the best?

The Court said yes. “If a statute is ambiguous,” writes Clarence Thomas in the majority opinion, and if the agency’s interpretation of the law is reasonable, then it can act in accordance with that interpretation—“even if the agency’s reading differs from what the court believes is the best statutory interpretation.”

That is: Everyone on the Court thought the FCC’s interpretation of the law was *not the best*, but six justices thought it was reasonable and could be carried out anyway.